

## **REMARKS**

Reconsideration and withdrawal of the rejections of the application are requested in view of the amendments and remarks presented herein, which place the application into condition for allowance.

### **I. STATUS OF CLAIMS AND FORMAL MATTERS**

Claims 1, 7, and 9 are pending in this application. Claims 1 and 9 are amended and claims 2 and 4 are withdrawn but amended, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

The amendment to claim 1 is to clarify the claimed ssDNA molecule, while the amendment to claim 9 is to clarify the vector of the claimed invention. The amendments to withdrawn claims 2 and 4 are to correct a spelling error. No new matter is added.

It is submitted that the claims are patentably distinct over the prior art and that these claim are and were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but simply for clarification and to round out the scope of protection to which Applicants are entitled.

### **II. THE REJECTION UNDER 35 U.S.C. § 102 IS OVERCOME**

Claim 1 was rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent Application Publication No. 2001/0053519 (“the ’519 publication”). Claims 1, 7, and 9 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,672,500 (“the ’500 patent”). These rejections are traversed and will be addressed concurrently.

The Office Action contended that the claimed invention encompassed any sequence of nucleotides presented in Figure 1 regardless of the size, or any ssDNA molecule that is 90% homologous to an ssDNA molecule of (i) in respect of its nucleotide sequence. According to the Office Action, the ’519 publication allegedly anticipates the claimed invention because it relates to an array comprising all possible 10mers. Moreover, the ’500 patent allegedly anticipates the claimed invention because it relates to a polypeptide and nucleic acid sequence of an enzyme involved in apoptosis designated as “Mch2.”

Initially, Applicants respectfully point out that “[a] rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference.” *In re Buszard* 504 F.3d 1364, 1366 (Fed. Cir. 2007) (citing *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994); *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001) (“Invalidity on the ground of ‘anticipation’ requires lack of novelty of the invention as claimed . . . that is, all of the elements and limitations of the claim must be shown in a single prior reference, arranged as in the claim.”)). With this in consideration, Applicants assert that the present rejections under Section 102 fail to stand, as neither the ’519 publication nor the ’500 patent teach each and every limitation of the instant claims.

Applicants draw attention to the instant claims, wherein claim 1 recites an “ssDNA molecule selected from the following group: (i) an ssDNA molecule consisting of the sequence of FIG. 1; (ii) an ssDNA molecule which is 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, or about 100% homologous to an ssDNA molecule according to (i) in respect of its number of nucleotides and its nucleotide sequence but which differs by at least one nucleotide from the ssDNA molecule according to (i) in respect of its number of nucleotides and/or its nucleotide sequence; and (iii) an ssDNA molecule having a sequence which is complementary to the sequence of an ssDNA molecule according to (i) or (ii).” Neither cited reference teaches an ssDNA molecule **consisting** of the sequence of FIG. 1. Moreover, neither cited reference teaches an ssDNA molecule which is 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, or about 100% homologous to an ssDNA molecule according to (i) in respect of its number of nucleotides **and** its nucleotide sequence but which differs by at least one nucleotide from the ssDNA molecule according to (i) in respect of its number of nucleotides and/or its nucleotide sequence. Finally, neither cited reference teaches an ssDNA molecule having a sequence which is complementary to the sequence of an ssDNA molecule according to (i) or (ii). Therefore, the cited references fail to anticipate the invention of instant claim 1, as well as claims 7 and 9 which depend therefrom.

Accordingly, Applicants request reconsideration and withdrawal of the rejection under Section 102.

**III. THE REJECTION UNDER 35 U.S.C. § 112 IS OVERCOME**

Claim 9 was rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. The Office Action contended that claim 9 does not clearly set forth the metes and bounds of invention, as claim 9 recites “a vector” and “especially an expression vector,” and the recitation of “especially an expression vector” is allegedly a narrower statement of the range/limitation.

In response, Applicants note that instant claim 9 herein recites “[a] vector having a DNA molecule according to claim 1.” Hence, Applicants assert that the metes and bounds of the claimed vector are clearly disclosed.

Accordingly, Applicants request reconsideration and withdrawal of the rejection under Section 112.

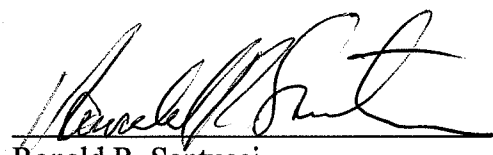
**CONCLUSION**

Applicants believe that the application is in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP  
Attorneys for Applicants

By:



Ronald R. Santucci

Reg. No. 28,988

Tel: (212) 588-0800

Fax: (212) 588-0500